

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA

THIRD JUDICIAL DISTRICT AT ANCHORAGE

In the Matter of the
2021 Redistricting Plan.

Case No. 3AN-21-08869CI

**ALASKA REDISTRICTING BOARD’S OBJECTIONS
TO CALISTA PLAINTIFFS’ PRE-FILED EXPERT TESTIMONY**

In accordance with the oral order of the Court during the Friday, January 14, 2022 discovery hearing and the agreement between the Calista Plaintiffs and the Alaska Redistricting Board (“Board”), the Board hereby submits its evidentiary objections to the pre-filed direct expert testimony in support of the Calista Plaintiffs.

I. RANDY RUEDRICH

General Objection. Mr. Ruedrich's pre-filed expert testimony is a combination of legal conclusions and legal arguments for a change to the Alaska Constitution's current requirement for senate districts: two contiguous house districts. Mr. Ruedrich's expert testimony is the following: those who live within the boundaries of an ANCSA regional corporation's boundaries—whether shareholders of the regional corporation or not—are entitled to be placed in as few house districts as possible and are entitled to have those house districts paired to form senate districts that maximize their voting strength. Of course, this is not what Article VI, § 6 of the Alaska Constitution requires, and Mr. Ruedrich is not qualified to opine on the legal requirements of Section 6.

1 Mr. Ruedrich is not a lawyer and does not appear to be admitted to any state's
2 bar association. Mr. Ruedrich is not qualified to opine on specific legal requirements
3 in Alaska or whether the Board's Final Plan meets those requirements.¹ As the Ninth
4 Circuit recognizes, the only expert on the law in litigation is the judge: "Under Federal
5 Rule of Evidence 702, matters of law are inappropriate subjects for expert testimony."²
6 All of Mr. Ruedrich's legal opinion testimony should be excluded in its entirety under
7 Rules 702 and 703 of the Alaska Rules of Evidence as unqualified expert opinion.³
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9

10 I. IMPROPER EXPERT OPINION

11 Below are the specific testimony that the Board objects to as improper expert
12 opinion on legal conclusions.
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16 ¹ For example, on page 10 of his testimony, Mr. Ruedrich states "An ideal 2021 Alaska
17 Senate District would contain 36,670 people," but Article VI, Section 6 and caselaw
18 interpreting it, refuse to apply the factors that are applicable to the house districts—including
19 population requirements—applicable to senate districts.

20 ² *Hooper v. Lockheed Martin Corp.*, 688 F.3d 1037, 1052 (9th Cir. 2012).

21 ³ Under Alaska Rule of Evidence 702 "scientific, technical or other specialized
22 knowledge" may be admitted by the superior court "only if it 'will assist the trier of fact to
23 understand the evidence or to determine a fact in issue.'" *Marsingill v. O'Malley*, 128 P.3d
24 151, 159 (Alaska 2006) (quoting Alaska Rule of Evidence 702(a)). To admit expert opinion
25 testimony, the trial court must first "determine the reliability of expert testimony: the witness
26 must be 'qualified as an expert by knowledge, skill, experience, training, or education.'" *Marsingill*, 128 P.3d at 159 (quoting Alaska Rule of Evidence 702(a)). Alaska Supreme Court caselaw shows that there are "two general categories of expert testimony": "(a) expert testimony based on technical or scientific research and testing; and (b) expert testimony based on practical experience in the relevant field." *Marsingill*, 128 P.3d at 159 (quoting *Getchell v. Lodge*, 65 P.3d 50, 56–57 (Alaska 2003)). Mr. Ruedrich's testimony falls under neither of these categories. He is not a lawyer and is not qualified to opine on the legal requirements of redistricting under Article VI of the Alaska Constitution.

1 Objection. Improper expert opinion on legal conclusion. [Alaska Rules of
2 Evidence 702-703] Mr. Ruedrich is not an attorney, and while he may opine as to his
3 opinion of whether a more cohesive or more socio-economically connected
4 communities exist, and setting out the facts and support for his opinion, he is not an
5 expert on the Alaska Constitution or whether something meets the dictates thereof.
6

7 **Page 2.**

8 a. “My duties within the context of my work with AFFER include the
9 construction of **constitutionally compliant** districts that conform to the goals of our
10 clients.”
11

12 b. “I worked for Patton Boggs as an expert witness in the 2001 Alaska
13 Redistricting litigation regarding whether the 2001 Proclamation was **constitutionally**
14 **compliant.**”
15

16 **Page 3.**

17 a. “As I will discuss, the people of the Calista Region have had a **severe**
18 **underrepresentation** for decades.”
19

20 b. “Our mission was to create a constitutional map that would result in
21 **less underrepresentation for the people of the Calista Region than had been the**
22 **case in proclamations from prior redistricting cycles.**”
23

24 **Page 4.**

25 a. “... the Board **failed to properly weigh the criteria required by**
26 **article VI, section 6** when it drew House Districts 37, 38, and 39 . . . “

1 b. “and their **lack of socio-economic integration** with District 39.”⁴

2 c. “The Calista Plaintiffs selected me as their expert to explain why the
3 **Board inappropriately prioritized certain redistricting criteria over others in the**
4 **course of drawing house district maps affecting the Calista Region contrary to the**
5 **requirements of the Alaska Constitution.**”

7 d. “but the people of the Calista Region would have stronger and fairer
8 representation⁵ because putting more of the Calista Region population together in
9 Senate District S **optimizes their voting power within the limits dictated by the**
10 **constraints that the Board must operate under.**”

12 **Page 6.**

13 a. “When the Board **engaged mapping that did not comply with the**
14 **Alaska Constitution**, AFFER actively challenged the Board with specific mapping
15 efforts . . .”

17 **Page 10.**

18 a. “An ideal 2021 Alaska Senate District would contain 36,670 people.”

20 **Page 11.**

21 a. “Previous redistricting boards have combined the Calista Region
22 population **with non-socio-economically integrated populations to fill multiple**
23

24 ⁴ The Board further objects to this as an improper expert opinion because it is conclusory
25 in that Mr. Ruedrich fails to identify what facts or evidence inform his opinion.

26 ⁵ The Board further objects to this as an improper expert opinion because it is conclusory
in that Mr. Ruedrich fails to identify what facts or evidence inform his opinion.

1 **adjacent house districts reducing the Calista Region’s effective representation. ...**

2 The Calista Region population in the other two districts with less than 50% Calista
3 Region population **become diluted minority populations.”**
4

5 b. “To make **this historical underrepresentation** more acute, these
6 three house districts have sometimes been paired with three separate senate districts.”

7 c. “This **denies effective representation** to the people of the Calista
8 Region who live outside of the Bethel house district.”
9

10 Page 12.

11 a. “. . . District 39 and Senate District T are still deprived of adequate
12 representation.”

13 b. “Therefore, the proper answer is no, people in the Calista Region have
14 not had, and still do not have, **proper legislative representation.**”
15

16 c. “The Dena’ina village of Tyonek is **not socio-economically**
17 **integrated** with any part of District 37.”⁶
18

19 **Page 13.**

20 a. The **most socio-economically integrated approach,**⁷ **and the best**
21 **way to counteract dilution of the Calista Region’s vote** is to increase the District 37
22 Calista Region population, which increases the Senate District S Calista Region
23

24 ⁶ The Board further objects to this as an improper expert opinion because it is conclusory
25 in that Mr. Ruedrich fails to identify what facts or evidence inform his opinion.

26 ⁷ The Board further objects to this as an improper expert opinion because it is conclusory
in that Mr. Ruedrich fails to identify what facts or evidence inform his opinion.

1 population. . . . The previously existing **severe District 39 Calista Region**
2 **representation dilution** is minimized to the degree permitted by declining population
3 in District 37.”
4

5 **Page 14.**

6 a. “The Calista villages of Kwigillingok, Kongiganak, and Quinhagak
7 **are a socio-economically integrated population** when considered with other Calista
8 villages in District 37.”⁸
9

10 b. “I have understood the villages of the Calista Region **to be socio-**
11 **economically integrated.**”⁹

12 **Page 15.**

13 a. “This action **dilutes the Calista Region population’s effective**
14 **representation** in two ways. . .” [Objection applies to all testimony through the end of
15 two subparts, which carries over to page 16].
16

17 **Page 16.**

18 a. “The Board split **the socio-economically integrated Calista Region**
19 **more than necessary and diluted the population’s voting power.**”¹⁰
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21
22

23 ⁸ The Board further objects to this as an improper expert opinion because it is conclusory
24 in that Mr. Ruedrich fails to identify what facts or evidence inform his opinion.

25 ⁹ The Board further objects to this as an improper expert opinion because it is conclusory
26 in that Mr. Ruedrich fails to identify what facts or evidence inform his opinion.

¹⁰ The Board further objects to this as an improper expert opinion because it is conclusory
in that Mr. Ruedrich fails to identify what facts or evidence inform his opinion.

1 **Page 17.**

2 a. “Those villages are left as stranded communities in District 39 without
3 effective representation.”

4
5 b. “The addition of . . . **dilutes the District 37 population of persons**
6 **from the Calista Region in that a more compact and a socio-economically**
7 **integrated district** could have been drawn with southern Calista villages adjacent to
8 District 37.”¹¹

9
10 **Page 18-19.**

11 a. “The Board did not place Hooper Bay and Scammon Bay in District
12 38, even though that would have allowed for a District 37 **that more closely complies**
13 **with the criteria in article VI, section 6 of the Alaska Constitution . . . to reduce**
14 **deviation and increase socio-economic integration.**”

15
16 b. “and to **minimize the dilution of the voters** who live within the
17 Calista Region.”

18
19 c. “Hooper Bay and Scammon Bay are materially underrepresented in
20 District 39, and it is possible to draw a map that better complies with the requirements
21 of article VI, section 6 that places Hooper Bay and Scammon Bay in District 38.”

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26 ¹¹ The Board further objects to this as an improper expert opinion because it is conclusory
in that Mr. Ruedrich fails to identify what facts or evidence inform his opinion.

1 **II. ADDITIONAL SPECIFIC OBJECTIONS**

2 **Page 9 Map.** Objection, foundation, hearsay. [Alaska Rules of Evidence 802,
3 901]
4

5 **Page 13.** “During the 2021 Redistricting process, Calista leadership and the
6 people from the region advocated for the following: . . .” **Objection.** Hearsay,
7 foundation. [Alaska Rule of Evidence 802, 901] The entire paragraph and its subparts
8 a-d are purported to be the desires advocated for all people from a vast region. Mr.
9 Ruedrich does not explain how he knows the desires and what each individual,
10 including non-Calista shareholders, living in the region advocated for, if anything.
11

12 **Page 14.** “The residual Calista Region population in District 39 is not properly
13 served by a house representative and senator who are not from the Calista Region.”
14 **Objection.** Improper expert testimony, conclusory. [Alaska Rules of Evidence 602,
15 702-703] Mr. Ruedrich has not explained the factual basis for his opinion that a
16 representative not from the region will not work for their constituents, even if a minority
17 of them.
18
19

20 **Page 15.** “I know from experience that the region is politically aligned regarding
21 other issues as well, but I am less familiar with the specifics of those issues.”
22 **Objection.** Improper expert testimony, conclusory. [Alaska Rules of Evidence 602,
23 702-703] Mr. Ruedrich has not explained the factual basis for his opinion that the
24 region is politically aligned regarding the vague “other issues.”
25
26

1 **Page 15.** “Calista’s boundary encompasses the YK Delta and is a visible
2 measure of economic and cultural integration.” **Objection.** Improper expert testimony,
3 conclusory. [Alaska Rules of Evidence 602, 702-703] Mr. Ruedrich has not explained
4 the factual basis for his opinion that the area is economically and culturally integrated.
5

6 **Page 16.** “With fewer people, District 38 as the 100% Calista Region population
7 district, is put at an electoral disadvantage for future Senate District S elections . . .”
8 **Objection.** Improper expert testimony, conclusory, foundation. [Alaska Rules of
9 Evidence 602, 702-703] Mr. Ruedrich has not explained the factual basis for his
10 opinion that the residents of the Calista region vote as a cohesive unit or that an electoral
11 disadvantage will occur in future elections.
12

13 **Page 18.** “That shortfall of 482 people may prove significant in a future Senate
14 District S election.” **Objection.** Improper opinion testimony, conclusory, foundation.
15 [Alaska Rules of Evidence 602, 702-703] Mr. Ruedrich has not explained the factual
16 basis or underlying knowledge for his opinion that the district has any real or materially
17 different impact from the current voting impact of the Calista Region. Mr. Ruedrich is
18 guessing.
19

20 **Page 18.** “The Board’s district boundaries dividing the Calista Region into three
21 house districts and two senate districts are tied to historical maps of the past several
22 decades.” **Objection.** Foundation. [Alaska Rule of Evidence 602] Mr. Ruedrich does
23 not identify the basis of his knowledge to state what the Board relied on in mapping the
24 applicable districts.
25
26

1 **Page 18.** “and Port Graham in District 37 clearly dilutes the Calista Region
2 population’s voting power in District 37, and more importantly, in Senate District S.”
3

4 **Objection.** Improper opinion testimony, conclusory, foundation. [Alaska Rules of
5 Evidence 602, 702-703] Mr. Ruedrich has not explained the factual basis or underlying
6 knowledge for his opinion that dilution is occurring.

7 DATED at Anchorage, Alaska, this 20th day of January, 2022.

8
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1 CERTIFICATE OF SERVICE

2 I hereby certify that on the 20th day of January, 2022,
3 a true and correct copy of ALASKA REDISTRICTING BOARD'S
4 OBJECTIONS TO CALISTA PLAINTIFFS' PRE-FILED EXPERT
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